

SENATE BILL No. 264

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-42-14.5.

Synopsis: Genetically engineered food. Provides that, beginning July 1, 2016, any food that is offered for retail sale is misbranded if it is not disclosed that the food is or may have been entirely or partially produced with genetic engineering. Provides that, beginning July 1, 2016, a food that is genetically engineered or a processed food may not state or imply that the food is natural. Establishes exceptions to the disclosure requirements and prohibition on stating a food is natural. Requires the state department of health (department) to administer and enforce the disclosure and labeling requirements. Allows the department to adopt rules. Establishes a Class A infraction for violations. Allows the department or a person to seek an injunction for a violation.

Effective: July 1, 2015.

Kruse

January 7, 2015, read first time and referred to Committee on Commerce & Technology.



First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 264

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-137, AS AMENDED BY P.L.86-2009,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 137. (a) "Food establishment", for purposes of
4 IC 16-42-5, ~~and~~ IC 16-42-5.2, **and IC 16-42-14.5**, means any building,
5 room, basement, vehicle of transportation, cellar, or open or enclosed
6 area occupied or used for handling food.
7 (b) The term does not include the following:
8 (1) A dwelling where food is prepared on the premises by the
9 occupants, free of charge, for their consumption or for
10 consumption by their guests.
11 (2) A gathering of individuals at a venue of an organization that
12 is organized for educational purposes in a nonpublic educational
13 setting or for religious purposes, if:
14 (A) the individuals separately or jointly provide or prepare,
15 free of charge, and consume their own food or that of others
16 attending the gathering; and



- 1 (B) the gathering is for a purpose of the organization.
 2 Gatherings for the purpose of the organization include funerals,
 3 wedding receptions, christenings, bar or bat mitzvahs, baptisms,
 4 communions, and other events or celebrations sponsored by the
 5 organization.
 6 (3) A vehicle used to transport food solely for distribution to the
 7 needy, either free of charge or for a nominal donation.
 8 (4) A private gathering of individuals who separately or jointly
 9 provide or prepare and consume their own food or that of others
 10 attending the gathering, regardless of whether the gathering is
 11 held on public or private property.
 12 (5) Except for food prepared by a for-profit entity, a venue of the
 13 sale of food prepared for an organization:
 14 (A) that is organized for:
 15 (i) religious purposes; or
 16 (ii) educational purposes in a nonpublic educational setting;
 17 (B) that is exempt from taxation under Section 501 of the
 18 Internal Revenue Code; and
 19 (C) that offers the food for sale to the final consumer at an
 20 event held for the benefit of the organization;
 21 unless the food is being provided in a restaurant or a cafeteria
 22 with an extensive menu of prepared foods.
 23 (6) Except for food prepared by a for-profit entity, an Indiana
 24 nonprofit organization that:
 25 (A) is organized for civic, fraternal, veterans, or charitable
 26 purposes;
 27 (B) is exempt from taxation under Section 501 of the Internal
 28 Revenue Code; and
 29 (C) offers food for sale to the final consumer at an event held
 30 for the benefit of the organization;
 31 if the events conducted by the organization take place for not
 32 more than fifteen (15) days in a calendar year.
 33 (7) An individual vendor of a farmer's market or roadside stand if
 34 the individual meets the requirements of IC 16-42-5-29.
 35 SECTION 2. IC 16-18-2-148.2 IS ADDED TO THE INDIANA
 36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2015]: **Sec. 148.2. "Genetically engineered",**
 38 **for purposes of IC 16-42-14.5, has the meaning set forth in**
 39 **IC 16-42-14.5-2.**
 40 SECTION 3. IC 16-18-2-293.7 IS ADDED TO THE INDIANA
 41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2015]: **Sec. 293.7. "Processed food", for**



purposes of IC 16-42-14.5, has the meaning set forth in IC 16-42-14.5-3.

SECTION 4. IC 16-18-2-293.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 293.8. "Processing aid", for purposes of IC 16-42-14.5, has the meaning set forth in IC 16-42-14.5-4.**

SECTION 5. IC 16-42-14.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 14.5. Food: Genetically Engineered Food

Sec. 1. This chapter may not be construed to require:

- (1) the listing or identification of any ingredient that is genetically engineered; or
- (2) that the term "genetically engineered" be placed immediately preceding the common name or primary product descriptor of a food.

Sec. 2. As used in this chapter, "genetically engineered" refers to a food that is produced from an organism or organisms in which the genetic material has been changed through the application of:

- (1) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles; or
- (2) fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination.

Sec. 3. As used in this chapter, "processed food" means a food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that has been subject to processing, including canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

Sec. 4. As used in this chapter, "processing aid" means:

- (1) a substance that is added to a food during the processing of the food, but is removed in some manner from the food before the food is packaged in its finished form;
- (2) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; or



(3) a substance that is added to a food for its technical or functional effect in the processing, but is present in the finished food at insignificant levels and does not have any technical or functional effect in the finished food.

Sec. 5. Beginning July 1, 2016, any food that is offered for retail sale is misbranded if it is not disclosed that the food is or may have been entirely or partially produced with genetic engineering as follows:

(1) In the case of a raw agricultural commodity, on the package offered for retail sale with the clear and conspicuous words "Genetically Engineered" on the front of the package of the commodity. However, if the raw agricultural commodity is not separately packaged or labeled, the clear and conspicuous words "Genetically Engineered" must appear on a label on the retail store shelf or bin in which the commodity is displayed for sale.

(2) In the case of a processed food, in clear and conspicuous language on the front or back of the package of the food, with the words "Partially Produced With Genetic Engineering" or "May Be Partially Produced With Genetic Engineering".

Sec. 6. Except for a food that is exempt under section 7 of this chapter, beginning July 1, 2016, a food that is genetically engineered or a processed food may not state or imply:

- (1) on its label;
- (2) on an accompanying sign in the retail establishment; or
- (3) in any advertising or promotional materials;

that the food is natural, naturally made, naturally grown, or all natural, or use any similar words.

Sec. 7. The requirements of this chapter do not apply to any of the following:

(1) Food consisting entirely of, or derived entirely from, an animal that has not been genetically engineered, regardless of whether the animal has been fed or injected with a genetically engineered food or a drug that has been produced through means of genetic engineering.

(2) A raw agricultural commodity or food derived from a raw agricultural commodity if the person who sells the raw agricultural commodity or food:

- (A) knows that the raw agricultural commodity or food has been grown, raised, or produced without the use of genetically engineered seed or food; or
- (B) receives from the person who sold or supplies the raw



1 agricultural commodity or food to that person, a sworn
2 statement that the raw agricultural commodity or food:

3 (i) has not been knowingly or intentionally genetically
4 engineered; and

5 (ii) has been segregated from and has not been
6 knowingly or intentionally commingled with food that
7 may have been genetically engineered at any time.

8 (3) A processed food that would be subject to this chapter
9 solely because it includes one (1) or more genetically
10 engineered processing aids or enzymes.

11 (4) An alcoholic beverage as defined by IC 7.1-1-3-5.

12 (5) Until July 1, 2020, a processed food that would be subject
13 to this chapter solely because it includes one (1) or more
14 genetically engineered ingredients, if:

15 (A) a single genetically engineered ingredient does not
16 account for more than one-half of one percent (0.5%) of
17 the total weight of the processed food; and

18 (B) the processed food does not contain more than ten (10)
19 genetically engineered ingredients.

20 (6) Food that the state department or an organization
21 recognized by the state department has determined has not
22 been knowingly and intentionally produced from or
23 commingled with genetically engineered seed or genetically
24 engineered food, if the determination has been made using a
25 sampling and testing procedure approved by the state
26 department, subject to the following:

27 (A) The sampling procedure provides that the sampling is
28 done according to a statistically valid sampling plan
29 consistent with principles recommended by an
30 internationally recognized source, including the
31 International Standards Organization (ISO) and the Grain
32 and Feed Trade Association (GAFTA).

33 (B) The testing procedure:

34 (i) is consistent with the most recent "Guidelines on
35 Performance Criteria and Validation of Methods for
36 Detection, Identification and Quantification of Specific
37 DNA Sequences and Specific Proteins in Foods",
38 (CAC/GL 74 (2010)) published by the Codex
39 Alimentarius Commission; and

40 (ii) does not rely on testing of processed foods in which
41 no deoxyribonucleic acid (DNA) is detectable.

42 (7) Food that has been lawfully certified to be labeled,



1 marketed, and offered for sale as "organic" under the federal
 2 Organic Food Production Act of 1990 (7 U.S.C. 6501 et seq.)
 3 and regulations adopted under the federal Organic Food
 4 Production Act of 1990, including a product that has been
 5 certified by a certifying agent (as defined by IC 15-15-8-2).

6 (8) Food that is not packaged for retail sale and that is:

7 (A) a processed food prepared and intended for immediate
 8 human consumption; or

9 (B) served, sold, or provided in a food establishment or
 10 other restaurant that is primarily engaged in the sale of
 11 food prepared and intended for immediate human
 12 consumption, including facilities exempt under
 13 IC 16-18-2-137(b).

14 (9) Medical food that is intended for the specific dietary
 15 management of a disease or condition for which distinctive
 16 nutritional requirements, based on recognized scientific
 17 principles, are established by medical evaluation.

18 Sec. 8. (a) The state department shall administer and enforce
 19 this chapter.

20 (b) The state department may adopt rules under IC 4-22-2
 21 necessary to implement and enforce this chapter. However, the
 22 rules may not create an exemption not specified in section 7 of this
 23 chapter.

24 Sec. 9. A person who violates this chapter commits a Class A
 25 infraction.

26 Sec. 10. (a) The state department or any person may, without
 27 proof of injury, maintain an action to enjoin a violation of this
 28 chapter.

29 (b) The court may award court costs and reasonable attorney's
 30 fees to the prevailing party in an action under this section.

